COMMON MISUNDERSTANDINGS WHEN PURCHASING A HOUSE

In this article I wish to briefly discuss three common issues that arise when people are looking at purchasing a residential property. These are deposits, illegal building works and the state of the chattels in the property after settlement.

Deposits

Contrary to popular belief, there is no legal requirement to pay a deposit when purchasing a property. Whether a deposit is paid, and the amount of it, is purely a matter of negotiation.

The agent has an interest in collecting a deposit because that is usually how they get paid. The deposit is usually lodged into the bank account of the agent, and once the agreement becomes unconditional the agent deducts its commission and pays the balance to the vendor.

The agent will usually push hard for a deposit to be paid on that basis.

But purchasers should not be afraid to push equally as hard in the opposite direction. For instance, it may be that an agreement is heavily conditional upon a number of items. Certainly if that is the case, the deposit should not be paid (if at all) until the agreement becomes unconditional. The mantra I always use is that the deposit is better in your bank account than somebody else's.

If purchasers do pay a deposit, then there are safeguards contained in the agreement. The standard terms say that it must stay in the agent's trust account until the agreement becomes unconditional or the title requisition procedure is complete. If the property is part of a subdivision where the title might not issue for years, we always recommend in this situation paying the minimum amount of deposit possible (if any).

Illegal Building Works

In a standard agreement for sale and purchase, vendors give numerous warranties about work they have either done themselves or had done on their behalf. These warranties say that for those works, the vendor obtained the relevant permits and/or consents from the Council.

A breach of that term is a breach of contract. It is usually not discovered by the purchaser until he/she has taken possession.

Not all building work requires consent.

Work carried out prior to the Building Act 1991 does not require consent. As long as the owner of the property had applied for, and had received a permit, then that was sufficient pre-1991.

Schedule 1 of the Building Act 2004 sets out a range of work where building consent is not required (exempt works).

It is important to realise when reading a LIM report that it only tells the public what the Council **knows** about the property. If work has been done on the property that the Council does **not** know then it will not appear on the LIM. That is why it is important to see what permits and consents have been obtained for the building and compare those against the physical structure itself.

Chattels

A relatively common complaint made by people who have just settled a property deal is that once they have moved in, they find the shower isn't strong enough; or the stove doesn't work.

Purchasers should check these items when they are inside the property with the agent and **before** signing an agreement. The general rule here is still Caveat Emptor (let the buyer beware).

If you settle the transaction and then cook your first meal in your new property and the oven doesn't work then you may have little cause for complaint.

There may be a complaint if it worked fine at the time you signed the agreement, but didn't work when you came to first use it.

But the only warranties that vendors give in respect of these matters is that they will be delivered to the purchaser on possession in their state of repair **as at the date of the agreement**, except fair wear and tear.